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ALEXANDER L. STEWAS,  
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NO. 83-2096

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1983

\* \* \* \* \*

JOHN CAMERON CRANK,

*Petitioner*

VS.

TEXAS STATE BOARD OF DENTAL EXAMINERS

*Respondent*

\* \* \* \* \*

BRIEF IN OPPOSITION TO THE  
PETITION FOR WRIT OF CERTIORARI

\* \* \* \* \*

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## QUESTION PRESENTED

Whether a licensee is constitutionally entitled to a continuance of an administrative hearing to allow licensee to retain new legal counsel where the lack of representation is occasioned by the voluntary dismissal of counsel of several months standing, by licensee, after the hearing is formally convened.

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NO. 85-2096

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1983

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JOHN CAMERON CRANK,

*Petitioner*

VS.

TEXAS STATE BOARD OF DENTAL EXAMINERS

*Respondent*

\* \* \* \* \*

BRIEF IN OPPOSITION TO THE  
PETITION FOR WRIT OF CERTIORARI

\* \* \* \* \*

TO THE HONORABLE SUPREME COURT OF THE  
UNITED STATES:

The Texas State Board of Dental Examiners files this Brief  
in Opposition to the Petition for Writ of Certiorari.

OPINIONS BELOW

The Texas Supreme Court entered an opinion February 1, 1984 and, following the grant of a motion for rehearing, withdrew the slip opinion of its February 1 opinion and rendered a second opinion March 21, 1984. The February 1, 1984 opinion is reported at 27 Tex.Sup.Ct.Jour. 191, and, evidently, is not reported in the Southwest Reporter (Pet.App.B). The March 21, 1984 opinion is reported at 27 Tex.Sup.Ct.Jour. 287, 666 S.W.2d 91 (1984) (Pet.App.A). The opinion of the Court of Appeals, Twelfth Supreme Judicial District, Tyler is reported at 658 S.W.2d 182 (1983) (Pet.App.C).

## STATEMENT

An administrative hearing was convened, after due notice, on May 9, 1980. After the formal opening of the hearing, Petitioner appeared with his counsel of several months' standing in open meeting, discharged his counsel, and then requested a postponement of the hearing to allow him time to hire another lawyer. Petitioner previously had been granted two postponements; his most recent request, prior to the hearing, had been denied. This denied request was not grounded on a desire to change lawyers, and the petition does not complain about that denial.

Although Petitioner, throughout these appellate proceedings, has persisted in his averments that his counsel was *permitted* to withdraw, such averment is without substance and is refuted by the record. (Pet.App.A, 2,3). There is nothing in the record to indicate that petitioner or his counsel ever sought permission of the Board for the attorney to withdraw; as a matter of fact, the record reflects the attorney was present and ready to proceed. Petitioner cites no authority for the proposition that the Board had the power to require him to proceed with an attorney with whom petitioner was dissatisfied.

## REASONS WHY PETITION FOR WRIT SHOULD NOT BE GRANTED

The Texas Supreme Court properly held that the denial of a continuance, under the circumstances, was not a violation of due process rights guaranteed by the United States Constitution.

## ARGUMENT

Even if, as Petitioner argues, the Respondent Board *permitted* Petitioners' counsel to withdraw, the "matter of continuance is traditionally within the discretion of the [administrative agency], and it is not every denial of a request for more time that violates due process *even if the party . . . is compelled to defend without counsel.*" (Emphasis added) *Ungar vs. Sarafite*, 376 U.S. 575, 589 (1964). In the case at bench the record is clear that Petitioner, for his own reasons, discharged

his lawyer after the hearing convened. The April 28, 1980 request for a continuance had been denied. Petitioner, at the hearing, offered, as his only reason for another postponement, the vague statement that he and his lawyer had reached a philosophical difference. No testimony or explanation was offered to edify the Respondent Board. The record reflects that Petitioner acknowledged the competency of his attorney, and that the attorney was present and ready to proceed.

This Court, in *Morris vs. Slappy*, \_\_\_\_ U.S. \_\_\_\_, 103 S.Ct. 1510, 51 USLW 4399 (1983) reinforced *Ungar*. Neither *Morris* nor *Ungar* was a criminal case, although *Morris* was a habeas corpus action growing out of a criminal conviction and *Ungar* was contempt action. Respondent has no quarrel with the general proposition that an accused respondent has a right to counsel in administrative proceedings; in fact, such right is statutorily provided in Art. 6252-13a, V.T.C.S., the Administrative Procedure and Texas Register Act. However, the right to legal representation is not an issue in this case; what is in issue is this: may a respondent in an administrative proceeding discharge his attorney, for vague, unexplained reasons, during the proceedings, and thereby, constitutionally be entitled to a continuance because he has no representation?

### CONCLUSION

*Morris* and *Ungar* are completely dispositive of this question, and the Petition for Writ of Certiorari should be denied.

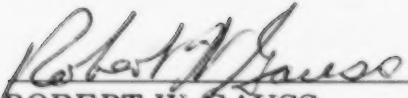
Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served by depositing same in the United States mail, certified, return receipt requested addressed to: Charles D. Reed, 1250 Eye Street N.W., Washington, D.C. 20006, on this 17 day of July, 1984.

  
ROBERT W. GAUSS